

EXHIBIT D

In The Matter Of:

Astra Aktiebolag

vs.

Andrx Pharmaceuticals, Inc.

Christine S. Meyer, Ph.D.

July 30, 2013

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Under the Protective Order

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Christine S. Meyer, Ph.D. July 30, 2013

1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

ASTRA AKTIEBOLAG, et al.,

Plaintiffs,

vs.

Civil Action No.

99-CIV-8926 (BSJ)

99-CIV-9887 (BSJ)

ANDRX PHARMACEUTICALS, INC.,

Defendant.

-----X

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July 30, 2013

9:35 a.m.

Videotaped deposition of CHRISTINE S. MEYER, PH.D, at the offices of Milbank, Tweed, Hadley & McCloy, One Chase Manhattan Plaza, New York, New York, before Nancy Mahoney, a Certified Court Reporter, Registered Professional Reporter, Certified LiveNote Reporter, and Notary Public within and for the States of New York and New Jersey.

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2	<p>1 A P P E A R A N C E S:</p> <p>2 MILBANK, TWEED, HADLEY & McCLOY LLP</p> <p>3 Attorneys for Plaintiff and the Witness</p> <p>4 One Chase Manhattan Plaza</p> <p>5 New York, New York 10005</p> <p>6 BY: ERROL B. TAYLOR, ESQ.</p> <p>7 etaylor@milbank.com</p> <p>8 SURAJ K. BALUSU, ESQ.</p> <p>9 sbalusu@milbank.com</p> <p>10 WINSTON & STRAWN LLP</p> <p>11 Attorneys for Defendant</p> <p>12 35 West Wacker Drive</p> <p>13 Chicago, Illinois 60601-9703</p> <p>14 BY: JAMES HURST, ESQ.</p> <p>15 jhurst@winston.com</p> <p>16 PETER J. SLAWNIAK, ESQ.</p> <p>17 pslawniak@winston.com</p> <p>18 ALSO PRESENT:</p> <p>19 Robert Gibbs, Videographer</p> <p>20 Merrill Legal Solutions</p>	4
3	<p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 CHRISTINE S. MEYER, PH.D.</p> <p>4 BY MR. HURST 6/326</p> <p>5 BY MR. TAYLOR 322</p> <p>6 PREVIOUSLY MARKED EXHIBITS:</p> <p>7 5010; 6022; 5008; 5009; 5012; 6023; 5002</p> <p>8 EXHIBIT INDEX</p> <p>9 DESCRIPTION PAGE</p> <p>10 (Deposition Meyer Exhibit 1 marked 10</p> <p>11 for identification, Curriculum Vitae</p> <p>12 of Christine S. Meyer, Ph.D.)</p> <p>13 (Deposition Meyer Exhibit 2 marked 21</p> <p>14 for identification, Expert Report of</p> <p>15 Dr. Christine S. Meyer, Ph.D., July</p> <p>16 1, 2013.)</p> <p>17 (Deposition Meyer Exhibit 3 marked 47</p> <p>18 for identification, Bates stamp ANDRX</p> <p>19 101539 through 101558.)</p> <p>20 (Deposition Meyer Exhibit 4 marked 51</p> <p>21 for identification, Bates stamp ANDRX</p> <p>22 215678 through 215701.)</p> <p>23 (Deposition Meyer Exhibit 5 marked 121</p> <p>24 for identification, Settlement</p> <p>25 Agreement, Bates stamp AZD 217316</p> <p>through 217346.)</p> <p>(Deposition Meyer Exhibit 6 marked 187</p> <p>for identification, Expert Report of</p> <p>Dr. Christine S. Meyer, Ph.D., June</p> <p>5, 2013, in the AstraZeneca v. Apotex</p> <p>litigation, Bates stamp AZD 999533</p> <p>through 999623.)</p>	5
2	<p>1 EXHIBIT INDEX</p> <p>2 DESCRIPTION PAGE</p> <p>3 (Deposition Meyer Exhibit 7 marked 198</p> <p>4 for identification, Prepared</p> <p>5 Statement of the Federal Trade</p> <p>6 Commission, July 23, 2013.)</p> <p>7 (Deposition Meyer Exhibit 8 marked 225</p> <p>8 for identification, Distribution</p> <p>9 Agreement, Bates stamp MEYER 000027</p> <p>10 through 000063.)</p> <p>11 (Deposition Meyer Exhibit 9 marked 312</p> <p>12 for identification, License</p> <p>13 Agreement, Bates stamp AZD 000191</p> <p>14 through 000332.)</p>	4
3	<p>1 THE VIDEOGRAPHER: Good morning</p> <p>2 everyone. This is the video operator speaking,</p> <p>3 Robert Gibbs of Merrill Legal Solutions of</p> <p>4 Chicago, 311 South Wacker Drive, Suite 300,</p> <p>5 Chicago, Illinois 60606.</p> <p>6 Today is July 30th, 2013, and the</p> <p>7 time is 9:38 a.m. We are at the offices of</p> <p>8 Milbank, Tweed LLP, One Chase Manhattan Plaza,</p> <p>9 New York City, New York 10005, to take the</p> <p>10 videotaped deposition of Ms. Christine Meyer in</p> <p>11 the matter of Astra Aktiebolag, et al. versus</p> <p>12 Andrx Pharmaceuticals, Inc., in the United</p> <p>13 States District Court for the Southern District</p> <p>14 of New York, Case Number 99-CIV-8926 (BSJ),</p> <p>15 second Case Number 99-CIV-9887 (BSJ).</p> <p>16 Will counsel please introduce</p> <p>17 themselves for the record.</p> <p>18 MR. TAYLOR: Errol Taylor and Suraj</p> <p>19 Balusu from Milbank for the plaintiffs.</p> <p>20 MR. HURST: Jim Hurst on behalf of</p> <p>21 the defendants from Winston & Strawn.</p> <p>22 MR. SLAWNIAK: Pete Slawniak, also</p> <p>23 on behalf of the defendants.</p> <p>24 THE VIDEOGRAPHER: Will the court</p> <p>25 reporter, Nancy Mahoney of Merrill Legal</p>	5

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<p style="text-align: right;">6</p> <p>1 Solutions, please swear the witness. 2 CHRISTINE S. MEYER, PH.D., 3 having been first duly sworn by the Notary 4 Public (Nancy Mahoney), was examined and 5 testified as follows: 6 EXAMINATION BY MR. HURST: 7 Q. Dr. Meyer, we've been introduced. 8 My name is Jim Hurst. I'm going to be asking 9 questions today. I take it, given your line of 10 business, that you've had your deposition taken 11 before? 12 A. I have. 13 Q. Approximately how many times? 14 A. I would say somewhere between eight 15 and ten times. 16 Q. So I know you know the ground 17 rules. The only one I like to remind witnesses 18 about is talking at the same time because it 19 drives the court reporter nuts. And almost 20 every deposition, I end up walking on a witness' 21 answer. I'm going to try not to do that, and 22 you should probably try to do the same with 23 respect to my questions. 24 Fair enough? 25 A. Fair enough.</p>	<p style="text-align: right;">8</p> <p>1 Q. That's fine. 2 So in the Apotex versus Merck case, 3 or vice versa, Merck versus Apotex, whatever, 4 when did you testify and where did you testify? 5 A. That case -- I testified earlier 6 this year in that case. That was in Toronto, 7 Canada. 8 Q. Under Canadian law? 9 A. Correct. 10 Q. Who did you testify for, which of 11 those two parties? 12 A. My work was done on behalf of 13 Merck. 14 Q. And the case involving the 15 Waddington -- I think you had said Waddington. 16 Is that correct? 17 A. I believe I said Waddington, yes. 18 Q. When and where did you testify in 19 that case? 20 A. Again, it's all detailed in my CV. 21 I can't recall the exact date. It was a couple 22 of years ago. It was in New Jersey. 23 Q. And who did you testify on behalf, 24 the patent owner or the accused infringers? 25 A. This was on behalf of the</p>
<p style="text-align: right;">7</p> <p>1 Q. All right. How about trial 2 testimony, have you testified at trial? 3 A. I have. 4 Q. How many times? 5 A. I don't know exactly. It's in my 6 CV. I would say on the order of half a dozen 7 times. 8 Q. Have you ever testified at trial 9 relating to an appropriate royalty and/or lost 10 profits in a patent case? 11 A. I have. 12 Q. How many times? 13 A. Again, I'd have to look at my CV to 14 be sure. Certainly a couple of times come to 15 mind. 16 Q. What comes to mind, what cases? 17 A. As I'm sitting here today, a case 18 comes to mind involving Apotex and Merck; 19 additionally a case comes to mind involving a 20 company called Waddington. 21 In terms of trial testimony, I 22 can't think of any others that involve 23 specifically what you had said, reasonable 24 royalty or lost profits, but there could be 25 others. I'd have to check my CV to be sure.</p>	<p style="text-align: right;">9</p> <p>1 patentholder. 2 Q. Have you ever testified on behalf 3 of an accused infringer at trial in connection 4 with the appropriate level of damages? 5 A. I have testified on behalf of 6 defendants at trial in terms of the appropriate 7 level of damages. 8 Q. That wasn't my question. 9 My question is: Have you ever 10 testified on behalf of an accused infringer in a 11 patent case at trial? 12 A. Again, without having my CV in 13 front of me, I can't -- I would want to look 14 back and be sure. As I said before, I've 15 testified on behalf of defendants in terms of 16 damages. I can't recall, as I sit here today, a 17 specific case in which I testified on behalf of 18 an accused infringer. I certainly have worked 19 with cases for defendants in patent cases. I 20 just can't recall a specific trial testimony 21 that is exactly, you know, what your -- what I 22 believe your question was. 23 Q. Did you have trouble understanding 24 the question? 25 A. I didn't have trouble understanding</p>

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<p style="text-align: right;">70</p> <p>1 it which describes why -- 2 (Multiple speakers.) 3 Q. I'm just directing you where I'm 4 going to read. 5 A. I see -- I see that phrase that 6 you -- that you mentioned. 7 Q. The assumed license can be 8 structured as having two components with 9 separate royalties for each. And then you have 10 a selling component and a manufacturing 11 component, right? 12 A. A license to sell infringing 13 omeprazole products at a defined future date and 14 a license to manufacture pre-launch inventory of 15 those products prior to that date. 16 Q. Okay. So you have a sale component 17 and a manufacturing component in this license 18 agreement, right? 19 A. Yes, that's correct. 20 Q. All right. And on what date -- in 21 this license agreement that you assumed the 22 parties would have reached, on what date would 23 Andrx be permitted to sell the material that it 24 manufactured under the manufacturing component 25 of the agreement?</p>	<p style="text-align: right;">72</p> <p>1 selling that product, would have to pay some 2 reasonable royalty, right? 3 A. Again, yes, I would assume that 4 there would be some license agreement in place, 5 but exactly what that license agreement looked 6 like, I haven't made any assumptions in that 7 regard. 8 Q. Did you have a range in mind about 9 what Andrx would have to pay upon the sale of 10 the product that it manufactured prior to March 11 of 2002, did you have a range for reasonable 12 royalty? 13 A. Again, no, there was no reason for 14 me to specifically analyze what a number or 15 range would be for that. That's not what I was 16 asked to do. That's not what the -- the nature 17 of the infringement. 18 I was asked to address specifically 19 the nature of the infringement and the royalty 20 that would be appropriate for the infringement 21 in question. 22 Q. In this hypothetical license 23 agreement where Andrx had the right to sell in 24 March of 2002, did you at least contemplate that 25 the reasonable royalty that Andrx would have to</p>
<p style="text-align: right;">71</p> <p>1 A. Under the -- if -- if the 2 validation batches are found to be infringing 3 and the hypothetical negotiation was in 4 September, I would have to double check on the 5 date, but it's roughly five months later they 6 would be allowed to sell. 7 And then con -- or in addition, if 8 the hypothetical negotiation date is in November 9 of 2001, then the license to sell would be four 10 months later, so approximately March of 2002. 11 Q. Okay. So under the -- under the 12 later of your two hypothetical negotiation 13 dates, this license agreement would give Andrx 14 the right to sell in about March of 2002, yes? 15 A. That's about correct, yes. 16 Q. And under what terms would Andrx be 17 permitted to sell under your hypothetical 18 license agreement? 19 A. I have not looked at that or 20 considered that and it wasn't necessary for the 21 question that I was asked, which was to isolate 22 a reasonable royalty for the manufacture 23 portion. So it wasn't necessary to look at the 24 subsequent license agreement. 25 Q. But you assumed that Andrx, upon</p>	<p style="text-align: right;">73</p> <p>1 pay upon that sale was more or less than, let's 2 say, 50 percent of profits? 3 A. I really have not -- I really can't 4 answer that. I haven't -- and I think I spell 5 this out clearly in the report and I think in my 6 previous questions. It wasn't relevant to the 7 question that I was asked to -- to opine on, it 8 wasn't relevant to the particular infringement 9 for which I was asked to provide a reasonable 10 royalty. So I have not -- I don't have an 11 opinion on that. 12 Q. Do you know -- is there a typical 13 royalty range that you're aware of for 14 pharmaceutical formulation patents that is known 15 in the industry, is there a typical royalty rate 16 for pharmaceutical formulation patents? 17 A. You know, my under -- based on my 18 work in licenses and royalties is that each case 19 is individual, and you really can't say there's 20 a typical rate. 21 Q. Do you -- are you aware -- can you 22 think of a -- strike that. 23 Have you ever worked on a case 24 where you had to come up with a reasonable 25 royalty for a pharmaceutical formulation patent?</p>

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<p style="text-align: right;">74</p> <p>1 A. Yes.</p> <p>2 Q. And what case was that that you're</p> <p>3 thinking of?</p> <p>4 A. I think there were several cases in</p> <p>5 which formulation patents were at issue. I'm</p> <p>6 trying to think if there was a formulation</p> <p>7 patent in the Merck case that I mentioned</p> <p>8 before. I know there have been formulation</p> <p>9 patents in other cases, but I would -- I would</p> <p>10 really have to think about -- you know, go back</p> <p>11 and think about those cases.</p> <p>12 I -- you know, I would have to go</p> <p>13 back and look at the specifics of the case.</p> <p>14 Q. Would -- do you remember the</p> <p>15 opinion you held on what a reasonable royalty</p> <p>16 would be for the pharmaceutical formulation</p> <p>17 patent at issue in the Merck case?</p> <p>18 A. I don't recall the details of the</p> <p>19 reasonable royalty in that case, no.</p> <p>20 Q. Do you remember whether it was</p> <p>21 higher or lower than 50 percent of the generic's</p> <p>22 profits?</p> <p>23 A. You know, there were -- that</p> <p>24 case -- in that case -- I mean, part of it is</p> <p>25 that there -- you know, I just want to be</p>	<p style="text-align: right;">76</p> <p>1 look at that number. I really just don't know</p> <p>2 off the top of my head.</p> <p>3 Q. Okay. So you've come up with an</p> <p>4 amount that Andrx would have to pay for the</p> <p>5 right to manufacture those pre-March 2002</p> <p>6 batches, right?</p> <p>7 A. This would be a license to</p> <p>8 manufacture ahead of the sale in March of 2002.</p> <p>9 Q. Sure.</p> <p>10 And the amount that you've offered</p> <p>11 an opinion on, if you include both validation</p> <p>12 and non-validation batches, is, you know,</p> <p>13 approximately 140 million or so, right?</p> <p>14 A. 140 million batches?</p> <p>15 Q. \$140 million, your opinion.</p> <p>16 A. Oh, my reasonable royalty?</p> <p>17 Q. Yeah.</p> <p>18 A. Under the assumption that the</p> <p>19 validation batches are infringing, it was about</p> <p>20 143 million or so, yes.</p> <p>21 Q. 143, okay.</p> <p>22 So under your hypothetical license</p> <p>23 agreement, Andrx pays 143 million for the right</p> <p>24 to manufacture these validation and</p> <p>25 non-validation batches, right?</p>
<p style="text-align: right;">75</p> <p>1 careful. There are confidentiality issues that</p> <p>2 I want to make sure that I'm not, you know,</p> <p>3 disclosing.</p> <p>4 I know there -- you know, there was</p> <p>5 some complications in that case, as there always</p> <p>6 are, and my recollection was I had some various</p> <p>7 scenarios and -- and some of them involved, you</p> <p>8 know -- I can't recall what percentage of</p> <p>9 profits those involved. I really can't. I</p> <p>10 just -- I do recall that there were a number of</p> <p>11 different scenarios.</p> <p>12 Q. But you don't know whether it was</p> <p>13 higher or lower than 50 percent of the generic's</p> <p>14 profits?</p> <p>15 A. I believe there were at least some</p> <p>16 scenarios in which it was higher than 50 percent</p> <p>17 of the profits, but there could have been some</p> <p>18 that were lower. I just don't recall.</p> <p>19 Q. And so Andrx manufactured about 80</p> <p>20 or so non-validation batches before March of</p> <p>21 2002, this date that you said they would be</p> <p>22 permitted to sell.</p> <p>23 Does that sound about right to you,</p> <p>24 about 80?</p> <p>25 A. I would really have to go back and</p>	<p style="text-align: right;">77</p> <p>1 A. That's correct.</p> <p>2 Q. And when Andrx sells the product</p> <p>3 from those validation and non-validation</p> <p>4 batches, Andrx pays again upon the sale of those</p> <p>5 batches, right?</p> <p>6 A. Again, I generally assume that</p> <p>7 there would be an additional royalty on the</p> <p>8 sales, but -- certainly a license to cover those</p> <p>9 sales. How exactly that license would be</p> <p>10 structured, I don't have an opinion and I</p> <p>11 haven't really considered that. I didn't need</p> <p>12 to consider that for purposes of this report.</p> <p>13 Q. But why would you need to consider</p> <p>14 it, because how could Andrx know whether it</p> <p>15 would be profitable to enter into this deal</p> <p>16 where they pay \$143 million upfront without</p> <p>17 knowing how much they were going to have to pay</p> <p>18 to Astra when they sold those same batches?</p> <p>19 A. Because the question that I was</p> <p>20 asked to answer here is simply: What is the --</p> <p>21 the reasonable royalty for the pre-launch</p> <p>22 manufacture? And so I was able to isolate that</p> <p>23 by looking at the incremental value to Andrx</p> <p>24 and, of course, considering also the cost to</p> <p>25 Astra of the incremental -- the incremental</p>

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<p style="text-align: right;">78</p> <p>1 value of manufacturing prior to sale. 2 And so that was something that I 3 was able to isolate, and -- and that's what I 4 did. 5 Q. Okay. So, as I understood your 6 opinion, you were basically -- as in all patent 7 licenses, there's essentially a profit split, 8 right, some goes to the patent owner and some 9 goes to the accused infringer, right? 10 A. Again, this actually comes back to 11 a question that you had asked previously. A 12 reasonable -- in a reasonable royalty setting, 13 sometimes the reasonable royalty can be even 14 higher than the infringer's profits or the 15 infringer's expected profits or what -- I'm not 16 sure which of those two you were thinking about. 17 It could be higher than either/or both of those. 18 And so there are times in which one 19 can think about the -- 20 Q. That's fine. I withdraw the 21 question. 22 A. -- reasonable royalty -- 23 Q. I withdraw the question. 24 Okay. So in your opinion, you've 25 divided the expected profits from the sale of</p>	<p style="text-align: right;">80</p> <p>1 pre-launch manufacture, the answer to that 2 question is yes. 3 I'm not sure -- I really didn't 4 quite follow the question that you asked, but 5 the -- you know, the -- 6 (Multiple speakers.) 7 A. -- if there's any relevant 8 question, that would be the relevant question. 9 Q. Let me with -- let me withdraw it. 10 So -- so say -- when Andrx, in your 11 hypothetical world, sells the validation and 12 non-validation batches we're discussing, they 13 would generate revenue, right? 14 A. If Andrx were to sell product, I 15 assume that they receive revenue from selling 16 product. 17 Q. Sure. 18 And from that revenue, they would 19 pay \$143 million to Astra, right, in your view? 20 A. Well, I don't know about the -- the 21 part that I -- I don't think is -- is correct is 22 the sort of -- that the from that revenue, sort 23 of tying a particular revenue. 24 I mean, the question was the -- and 25 the analysis was the full incremental benefit of</p>
<p style="text-align: right;">79</p> <p>1 these validation and non-validation batches, 75 2 to Astra, 25 to Andrx, right? 3 A. Well, that's not how I would 4 characterize it at all. I mean, I think I -- I 5 characterize it the way I would characterize it 6 in the report, which is the incremental value -- 7 I looked at the incremental value of receiving a 8 license -- I should clarify -- Andrx receiving a 9 license to manufacture ahead of launch and what 10 the incremental value of that license would be. 11 Q. But when they -- how much revenue 12 would Andrx generate from the sale of the 13 validation and non-validation batches we were 14 looking at, how much revenue would they 15 generate? 16 A. I haven't calculated that specific 17 number. 18 Q. Once they pay off 140 million, 19 would there be any left over for Andrx, in your 20 view? 21 A. I haven't -- I mean, I'm not sure 22 exactly what question you're asking. 23 In terms of after they paid this 24 royalty would there still be some amount left of 25 the incremental benefit that Andrx received from</p>	<p style="text-align: right;">81</p> <p>1 manufacturing early, that some of that would 2 have been generated by the revenue on particular 3 sales and some would have been generated by the 4 revenue on other sales. 5 So I -- to sort of tie to it 6 particular revenues is where I'm having 7 difficulty with your question. 8 Q. Go to Page 25 of your report. You 9 have a chart. I want to look at the -- I guess 10 I'll just look at the row called Including 11 Validation Batches. 12 Do you see that? 13 A. I see the row Including Validation 14 Batches, yes. 15 Q. So you calculated the incremental 16 benefit of a manufacturing license to Andrx 17 would be about \$190 million, right? 18 A. I think you said that right. The 19 incremental value of a manufacturing license 20 would be \$190 million, yes. 21 Q. And so -- and you proposed that 22 Andrx -- of that 190 million dollar benefit, you 23 proposed that Andrx would pay to Astra about 143 24 million, right? 25 A. I -- I -- the reasonable royalty</p>

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<p style="text-align: right;">82</p> <p>1 under the scenario of including validation 2 batches I found to be about 143 million. 3 Q. And so that -- 4 A. But that's -- I mean, yes, that's 5 what I found. Not paying out of something, 6 but -- 7 Q. Sure. 8 And that would leave still a 9 benefit to Andrx of -- if you subtracted the 143 10 million from the 190 million, you'd still get a 11 benefit of about \$38 million to Andrx, right? 12 A. There would -- it would be probably 13 more like 40, 40 million plus. 14 Q. Did I do the math wrong? Yeah, 48 15 million, 48 million. Sorry -- wait, wait. 16 A. 143. 17 Q. 143. So, yeah. 18 A. So in terms of simply looking 19 here -- 20 Q. Let me -- just because I messed up 21 the math, I want to ask the question again, 22 okay? 23 A. That's fine. 24 Q. Yeah. 25 So on Page 25, you have an</p>	<p style="text-align: right;">84</p> <p>1 under the manufacturing component of the 2 license, right? 3 A. I'm sorry, say that again. 4 Q. You have not offered an opinion in 5 this case about how much it would actually cost 6 Andrx to sell the product that it made under the 7 manufacturing component of the license, right? 8 A. Again, I think I was clear. There 9 were two parts to the license, and the only part 10 that I needed to specifically value in order to 11 come up with a reasonable royalty for the 12 infringement was the manufacturing portion. I 13 haven't offered an opinion on what the rest of 14 the license would look like. And I think that 15 was your question. 16 Q. It was. 17 So what I'm saying is if the rest 18 of the license costs a hundred million dollars, 19 your proposed deal would be entirely 20 unprofitable for Andrx, right? 21 A. Can you say that again? 22 Q. Yeah. 23 If the manufacturing component 24 costs 143 million and hypothetically the sales 25 component costs, let's say, a hundred million,</p>
<p style="text-align: right;">83</p> <p>1 incremental benefit to Andrx of about 190 2 million from this manufacturing license that 3 you've hypothesized, right? 4 A. That's correct. 5 Q. And the reasonable royalty you 6 propose that Andrx would pay to Astra would be 7 approximately 143 million, right? 8 A. That's correct. 9 Q. And so even after paying that 10 reasonable royalty to Astra, under your 11 analysis, Andrx would still have a benefit of 12 about \$47 million, right? 13 A. Again -- 14 Q. About. 15 A. If you look at the difference 16 between the 190 million dollar incremental 17 benefit that this manufacturing license would 18 give to Andrx and the amount of royalty that 19 they have to pay based on the reasonable 20 royalty, then the difference is 47 -- around 47 21 million or so. I'll take your word for the math 22 on that. 23 Q. You don't have an opinion on how 24 much it would actually have cost Andrx to 25 actually sell the product that it manufactured</p>	<p style="text-align: right;">85</p> <p>1 your proposed hypothetical deal would be 2 unprofitable for Andrx, right? 3 A. Well, considering the fact that 4 they expected to make one-and-a-half billion 5 dollars, no, I don't think that would have been 6 unprofitable at all. That would have been -- 7 that would have been a very profitable license 8 for them. 9 Q. Yeah, but why wouldn't they just 10 forego the manufacturing component all together? 11 The manufacturing component would actually cost 12 them more money than it made them, wouldn't it? 13 A. No, I don't think so. I mean, what 14 you -- you were talking about having -- I mean, 15 I'm not sure where you're -- you know, which 16 numbers you're thinking about, but in terms of 17 their expectation of profitability -- and this 18 is only over the first five years -- I believe 19 it's the first five years -- was one-and-a-half 20 billion dollars in profits, more or less. And 21 maybe I even have that number wrong, but I think 22 that's about right. 23 So I'm not sure why you think the 24 license that you just set out would be 25 unprofitable for Andrx. I don't understand</p>

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<p style="text-align: right;">86</p> <p>1 that.</p> <p>2 Q. Well --</p> <p>3 A. It seems very profitable for me.</p> <p>4 Q. For the sale of the product -- all</p> <p>5 I'm saying is, for the sale of the product made</p> <p>6 under the manufacturing component, if it costs</p> <p>7 them 143 million for that -- to make that -- to</p> <p>8 make that product, right, isn't it possible that</p> <p>9 the sales component would swamp any profits they</p> <p>10 earned from making those lots?</p> <p>11 A. But the critical thing to</p> <p>12 understand here is we're not just talking</p> <p>13 about -- we're talking about the -- the head</p> <p>14 start, right, the -- or, as I think one of the</p> <p>15 witnesses talked about, a running start versus a</p> <p>16 standing start for getting into this opportunity</p> <p>17 sooner and being able to maximize this</p> <p>18 opportunity. And this is the total benefit that</p> <p>19 accrues over the course of the entire five</p> <p>20 years, but it has to do -- it's the incremental</p> <p>21 value of the man -- of the ability to</p> <p>22 manufacture early, but I don't -- and that's</p> <p>23 where I -- I have trouble with you sort of, you</p> <p>24 know, linking one piece to another piece.</p> <p>25 I mean, you have to look at the</p>	<p style="text-align: right;">88</p> <p>1 manufacturing component. That's exactly what I</p> <p>2 did.</p> <p>3 So that's why I'm -- I'm not sure</p> <p>4 what you mean by linked. There is a -- there is</p> <p>5 a way -- and I've done it and it's, you know,</p> <p>6 quite straightforward -- of how to actually</p> <p>7 think about the incremental value of the</p> <p>8 manufacturing component, and that's what I've</p> <p>9 done.</p> <p>10 Q. Would Andrx have entered a deal, in</p> <p>11 your view, where it only got the manufacturing</p> <p>12 component of the license but did not get the</p> <p>13 sales component at all?</p> <p>14 A. I -- again, what I looked at was</p> <p>15 what I thought was a reasonable way to structure</p> <p>16 a hypothetical negotiation in this construct. I</p> <p>17 don't know -- you know, I'd have to think</p> <p>18 about -- I'm not sure why you would manufacture</p> <p>19 without being able to sell, but maybe there</p> <p>20 would be another way for them to sell. I mean,</p> <p>21 that's -- but I assume you manufacture in order</p> <p>22 to be able to sell.</p> <p>23 Q. So is it fair to say, therefore,</p> <p>24 that if Andrx -- strike that.</p> <p>25 So is it fair to say that if Astra</p>
<p style="text-align: right;">87</p> <p>1 totality of the opportunity here was to make --</p> <p>2 this incremental benefit was worth 190 million</p> <p>3 to Andrx, and it would then -- the reasonable</p> <p>4 royalty that I found would still leave it with</p> <p>5 the considerable profit on this incremental</p> <p>6 piece, even if it pays the reasonable royalty</p> <p>7 that I have opined on.</p> <p>8 Q. In a rational world, aren't the</p> <p>9 manufacturing component and the sales component</p> <p>10 of your hypothetical license linked to one</p> <p>11 another?</p> <p>12 A. I'm not sure what you mean by</p> <p>13 linked to one another.</p> <p>14 Q. Let me say -- let me try to explain</p> <p>15 that.</p> <p>16 If you're required to pay more</p> <p>17 upfront for the manufacturing component, doesn't</p> <p>18 it stand to reason that you would therefore want</p> <p>19 to pay less for the sales component?</p> <p>20 A. Well, I think someone who's paying</p> <p>21 royalties always wants to pay less, I'm assuming</p> <p>22 that.</p> <p>23 What -- what I can do with the --</p> <p>24 the approach that I've looked at is I can</p> <p>25 actually isolate the incremental value of the</p>	<p style="text-align: right;">89</p> <p>1 only offered the manufacturing component of the</p> <p>2 deal but did not offer the sales component of</p> <p>3 your hypothetical license, that Andrx would have</p> <p>4 said no to the deal?</p> <p>5 A. Again, I'm not sure -- I'm not sure</p> <p>6 whether they would have or would not have. I'm</p> <p>7 not sure if there would have been, you know,</p> <p>8 ways for them to then sell that manufactured</p> <p>9 inventory on, for example, but I'm not assuming</p> <p>10 that in this case.</p> <p>11 What I'm assuming is a situation</p> <p>12 which there is, as I -- as I stated in the</p> <p>13 report, a license to manufacture and a license</p> <p>14 to sell and I'm able to isolate the</p> <p>15 manufacturing component.</p> <p>16 Q. Can you think of any rational</p> <p>17 reason -- as you sit here today, can you think</p> <p>18 of any rational reason for Andrx to have</p> <p>19 accepted a 143 million dollar proposed royalty</p> <p>20 to manufacture if it didn't simultaneously get</p> <p>21 the right to sell product from Astra?</p> <p>22 A. I mean, if it could have -- I guess</p> <p>23 I -- the question is, you know, is it -- well,</p> <p>24 one question is: Is it selling it itself, can</p> <p>25 it -- can it sell that product to someone else</p>

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<p style="text-align: right;">90</p> <p>1 that does have, let's say, the right for 2 whatever reason to sell it into the marketplace? 3 Again, I'm assuming -- and I think 4 this makes sense in terms of the license that 5 we're talking about here is to have a license 6 that includes both a manufacturing component and 7 a selling component. 8 Q. Dr. Meyer, the only value of the 9 manufacturing component of your hypothetical 10 license is the fact that you can sell it -- the 11 product later and make a profit, right? 12 A. The value of the manufacturing 13 component is the increased profit that you would 14 make from -- increased, you know, in terms of 15 comparing two possible worlds: One is which -- 16 in which you sell, you know, four or five months 17 after the hypothetical negotiation, and one -- 18 another one in which you're delayed. So it's -- 19 it's the incremental value of being able to sell 20 earlier. 21 Q. Okay. So now I'm going to ask you 22 to assume that Andrx did not get the right to 23 sell the validation and non-validation batches 24 to anybody, it didn't get that right in this 25 hypothetical negotiation, okay. That's what I'm</p>	<p style="text-align: right;">92</p> <p>1 A. I understand that. 2 Q. And, therefore, yes, in this 3 hypothetical negotiation, I'm assuming that 4 Andrx has to assume that the patent is both 5 valid and infringed and, therefore, it cannot 6 sell its product absent a license from Astra. 7 Do you understand the assumption I'm asking you 8 to make? 9 A. I understand the assumption. 10 Q. Okay. With the assumption that 11 Astra declines to give Andrx any right to sell 12 its product, can you think of any rational 13 reason for Andrx to agree to pay any royalty, 14 much less \$143 million, for the mere right to 15 make product? 16 A. Well, in that case, I don't 17 understand -- then we wouldn't be here, because 18 in that case, if Andrx knows that it can't sell, 19 then I don't see why it would have manufactured 20 in the first place; but the fact is, in this 21 case, as I understand it, there has been 22 infringement, and the infringement is due to the 23 manufacture. 24 So the hypothetical that you pose, 25 I would agree that Andrx wouldn't pay, but I</p>
<p style="text-align: right;">91</p> <p>1 asking you to assume. Do you understand the 2 assumption I'm asking you to make? 3 A. I believe so. 4 Q. If under that assumption -- strike 5 that. 6 If Andrx did not get the right 7 through this hypothetical license to sell its 8 product to anybody, can you think of any 9 rational reason for Andrx to agree to pay \$143 10 million for the right to manufacture its 11 validation and non-validation batches? 12 A. Again, I just want to make sure 13 that I'm clear on -- on what you're asking. 14 Are you saying that Andrx knows 15 that at the time that it's entering into this 16 license, it affirmatively knows that it can't 17 sell -- 18 Q. Right. 19 A. -- or it still has possibilities or 20 probabilities of selling? 21 Q. You understand that when you enter 22 into -- strike that. 23 You understand that for a 24 reasonable royalty opinion, you have to assume 25 that the patent is both infringed and valid?</p>	<p style="text-align: right;">93</p> <p>1 would also say that there would be no 2 infringement, there would be no -- I think what 3 I'm following is that there would be no 4 manufacture, but that's not the situation we 5 have here. We have a situation in which there 6 was manufacture and that manufacturer was 7 infringing, so it doesn't -- it doesn't get us 8 anywhere in terms of the question, which is 9 what's a reasonable royalty for the manufacture. 10 Q. I'm not totally sure I follow what 11 you just said, so I'm going to try to clarify. 12 With the assumption -- whether you 13 agree whether it's a good assumption or a bad 14 assumption, okay, with the assumption that Astra 15 would not give, in this hypothetical 16 negotiation, Andrx the right to sell its product 17 to anybody, you agree, don't you, that, 18 therefore, Andrx would not agree to pay any 19 royalty, much less \$143 million for the mere 20 right to manufacture the product? You agree 21 with that, don't you? 22 A. And I think, as I just stated a 23 moment ago, if -- if Andrx knew for sure that it 24 could not sell its product, I don't think it 25 would have manufactured the product and I</p>

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<p style="text-align: right;">94</p> <p>1 don't -- and, therefore, it wouldn't have made 2 sense to pay a royalty for something that you 3 didn't do, but that's -- that is irrelevant, 4 actually, to the question at hand. 5 Q. Well, it's not. You understand 6 that the real world is different from the 7 hypothetical negotiation. In the real world, 8 Andrx thought the patent was both not infringed 9 and invalid; though a court disagreed, Andrx 10 believed the patent was both non-infringed and 11 invalid; you understand that, right? 12 A. I'm not sure what Andrx's specific 13 thinking on, you know, whether it was invalid or 14 non-infringed or the probabilities of those 15 things occurring actually were. 16 Q. You understood, though, it was 17 challenging both the validity, infringement of 18 the patent in court; you understood that, right? 19 A. I generally understand that to be 20 the case. 21 Q. Right. 22 A. But I don't have a detailed 23 understanding of the -- of the liabilities 24 portion of the case. 25 Q. And that's the real world. In the</p>	<p style="text-align: right;">96</p> <p>1 A. And, again, this is -- 2 Q. Would it? Yes or no. 3 A. It would neither manufacture nor 4 pay, but it wouldn't manufacture. And so then 5 we -- that doesn't really -- that's not relevant 6 to the question at hand. 7 Q. Well, it is, actually. 8 It's true, isn't it, that -- that 9 Andrx couldn't make any money from the 10 manufacturing component of your hypothetical 11 license agreement alone, right? 12 A. I -- as I show with the modeling, 13 it expected to make considerable money as a 14 result of getting the manufacturing component of 15 the license. 16 Q. Through the sales, right, that's 17 how it made its money, by selling the product, 18 right? 19 A. It's the incremental profits that 20 are coming from the incremental sales, but 21 they -- they are derived from the ability to 22 manufacture early. 23 Q. That's what I'm trying to focus on. 24 Without the sales component and with only the 25 manufacturing component, Andrx couldn't make any</p>
<p style="text-align: right;">95</p> <p>1 hypothetical -- and that's why it manufactured 2 its product, it was hoping to win the patent 3 case, right? You understand that, right? 4 A. I would think that it was 5 manufacturing the product in the hopes of 6 winning the patent case, yes. 7 Q. Right. 8 And now -- and so that's why it 9 manufactured its product in the real world. 10 Now, but in the hypothetical negotiation world, 11 it has to assume it's going to lose the patent 12 case, it has to assume the patent is both valid 13 and infringed. 14 You understand that, right? 15 A. In the hypothetical negotiation, we 16 always assume a valid and infringed patent, 17 that's correct. 18 Q. Right, right. 19 So given that, you agree, don't 20 you, that Andrx, if it didn't get the sales 21 component of your hypothetical license 22 agreement, if it had no right to sell the 23 product, it certainly wouldn't pay any royalty, 24 much less 100 million plus royalty for the mere 25 right to manufacture alone, would it?</p>	<p style="text-align: right;">97</p> <p>1 money on the batches it manufactured, true? 2 A. But, again, I think we just went 3 through why it doesn't make sense to -- to think 4 about a license with a -- and that's why I did 5 think about a license with a manufacturing 6 component and a sales component. 7 Q. Okay. But -- so, but you agree -- 8 whether you think it's an unreasonable 9 assumption or not, you agree that from the 10 manufacturing component of your hypothetical 11 license agreement alone, from just the 12 manufacturing component, Andrx couldn't make any 13 money? 14 A. Well, that's where I -- that's 15 where I disagree, because it does -- I mean, the 16 point here is that in the -- in the license that 17 I have set up for the hypothetical negotiation, 18 it does make incremental profits as a result of 19 the manufacturing component of the license. 20 Q. Only through the sales component. 21 I'm saying without the sales component, you 22 agree that Andrx can't make any money from the 23 manufacturing component alone, true? 24 A. And -- 25 Q. True?</p>

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<p style="text-align: right;">98</p> <p>1 A. And what I'm saying -- and I think 2 I'm trying to be very careful on this, but 3 without -- you know, without the sales 4 component, they never would have manufactured in 5 the first place in the way that you're 6 describing. And so then I'm not sure what that 7 even tells us about anything in this case. 8 Q. Well, in the real world, Andrx did 9 manufacture and it didn't sell, right? 10 A. You were talking quickly now, I 11 just want to make sure, could you repeat that? 12 Q. In the real world, Andrx made both 13 validation and non-validation batches, true? 14 A. I understand that to be the case. 15 Q. And in the real world, Andrx didn't 16 actually sell any product, correct? 17 A. Well, Andrx -- I mean, as far as I 18 know, they didn't sell any product sort of 19 around this point in time. Yeah, I do 20 understand that they sold product later on in 21 time, but around this time I don't -- I haven't 22 seen any evidence that they sold any product. 23 Q. Meaning before the expiration of 24 the patent, they didn't sell any product, right? 25 A. That's correct, I was referring to</p>	<p style="text-align: right;">100</p> <p>1 it -- it shows me that this was an opportunity 2 that was worth quite a bit because Andrx was 3 willing to invest, I think you characterize it, 4 as tens of millions of dollars into this. 5 Q. And in the real world, since they 6 did manufacture but they didn't get a right to 7 sell, can't we just look at that scenario to 8 show that Andrx would never pay a penny for just 9 the right to manufacturing without the right to 10 sell? 11 A. I -- I don't understand your 12 question at all. 13 Q. Given what happened in the real 14 world where Andrx made batches and lost money 15 because it couldn't sell, doesn't that lead you 16 to the conclusion that Andrx would never pay any 17 reasonable royalty for the right to manufacture 18 alone without the right to sell? 19 A. Well, I think there -- there are 20 about sort of three -- at least three different 21 components to your question. 22 I mean, first of all, in the real 23 world, they did spend money to manufacture, as 24 you had -- you said it was something on tens of 25 millions of dollars, without actually having a</p>
<p style="text-align: right;">99</p> <p>1 the expiration. 2 Q. And so in the real world, did Andrx 3 make any money from the manufacturing that 4 occurred before your proposed selling date of 5 March 2002? 6 A. Although that's irrelevant to my 7 analysis, my understanding is that Andrx did 8 not -- at least I haven't seen any evidence that 9 Andrx sold or made any profits from those 10 particular batches. 11 Q. They actually lost money from 12 making those validation and non-validation 13 batches, given the court's ruling on 14 infringement and validity, correct? 15 A. I'm not sure what you mean by they 16 lost money. 17 Q. Well, it cost them money to make 18 the batches and they didn't make any money back, 19 so they lost money? 20 A. Andrx certainly spent money on -- 21 on making those batches, yes. 22 Q. And it was a write-off that they 23 had to take in the neighborhood of tens of 24 millions of dollars. Are you aware of that? 25 A. I don't know the exact amount, but</p>	<p style="text-align: right;">101</p> <p>1 license to sell. So I -- I disagree with that 2 part of the premise of your question. 3 But the -- the question here really 4 has to do with the hypothetical negotiation. 5 And I think as -- as we've walked through 6 before, it doesn't make sense to think about -- 7 I mean, what makes sense is the -- is the 8 license that I have set up in which there's a 9 manufacturing component and a sales component 10 because the -- because of the question that I 11 was asked, which is: What's a reasonable 12 royalty for the manufacture? And the -- and the 13 manufacture was the actual infringing 14 infringement that I understand occurred in this 15 case. 16 Q. How many times in your lifetime 17 have you been asked to determine appropriate 18 royalty for a patent license, approximately? 19 A. I don't know, probably -- I'm not 20 sure. 25, 30 times, maybe, maybe more than 21 that. 22 Q. Have you been asked to offer an 23 opinion on the right to merely make the accused 24 product without the right to sell the product 25 later? Have you ever been asked to do that?</p>

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<p style="text-align: right;">102</p> <p>1 A. I have to think, you know, through 2 all the -- the cases and the -- as you said, the 3 times that I've been asked to -- to think about 4 a reasonable royalty. I mean, they're all -- 5 they're all individual cases, but the framework 6 is all the same in really all of those cases, 7 which is, as I've done here, to think about the 8 incremental benefits and costs of the license. 9 In terms of, you know, has there 10 been a case that I've worked on that has, you 11 know, the specific fact pattern here? I would 12 say, you know, to the best of my recollection, I 13 mean, every case is different, I can't think of 14 one that had the particular fact pattern here. 15 But -- but the methodology is the same that I've 16 used in -- in, you know, pretty much all the 17 cases that I've worked on. 18 Q. My question is a little more 19 precise. 20 Can you think of an instance where 21 you were asked to opine on a situation where the 22 accused infringer was given the license to 23 manufacture the product but was not given a 24 license to sell the product, can you think of an 25 instance where you actually were asked to do</p>	<p style="text-align: right;">104</p> <p>1 license under the hypothetical negotiation. 2 What I was asked to do was -- and I think this 3 is spelled out in -- 4 Q. Let me withdraw the question. 5 And so my question to you is: Have 6 you ever been in your lifetime asked to offer an 7 opinion on what an appropriate royalty would be 8 to give the accused infringer the right to make 9 the accused product but then have no ability to 10 sell the accused product; have you ever been 11 asked to offer an opinion on that scenario? 12 A. I cannot -- again, as I said, I 13 think I've said this a couple of times and -- 14 and maybe we're just understanding the question 15 differently, but -- 16 Q. You can't think of a situation? 17 A. -- I can't -- I can't think of a 18 situation in which, you know, counsel asked me 19 the specific question that you're -- that you're 20 just posing to me. 21 Q. Okay. And, in fact, I mean, under 22 the patent code, there's separate -- with 23 respect to reasonable royalty, there's a 24 reasonable royalty for making, using and 25 selling. You've heard of those phrase -- those</p>
<p style="text-align: right;">103</p> <p>1 that? 2 A. And that's, I think, the question 3 that I -- that I just answered, which was, you 4 know, I've worked on a lot of cases in which 5 patent licenses were, you know, either front and 6 center or -- or were a component, and there's 7 a -- there's a common methodology to doing that. 8 And you're asking me, I think, for, 9 you know, was there a case in which the fact 10 pattern and, as you described, the manufacturing 11 component as it was here. I can't think of a 12 case that had, you know, a fact pattern 13 specifically like this, but -- but in terms of, 14 you know, the methodology, that would be the 15 same no matter what the fact pattern would be. 16 Q. My -- actually my hypothetical is 17 not like this case because in this case you were 18 asked to provide an opinion on a reasonable 19 royalty where the accused infringer is given the 20 right to manufacture and sell, right, you have 21 both components in your hypothetical license 22 agreement, both a manufacturing component and a 23 selling component, right? 24 A. I have a manufacturing component 25 and a selling component in my -- in my -- the</p>	<p style="text-align: right;">105</p> <p>1 three phrases used in connection with the 2 reasonable royalty: Making, using and selling? 3 A. I've heard those three phrases -- 4 those three words used in connection with a 5 reasonable -- with patent law generally and 6 infringement. 7 Q. Are you aware of any article, any 8 case, anything from your experience where 9 somebody opines on the right to make the accused 10 product without having the right to sell what 11 the accused infringer just made? Are you aware 12 of any article, any case, any literature where 13 it's only the right to make the product but not 14 sell the product? 15 A. You know, I guess when I -- when I 16 look at -- you're talking about articles. A 17 couple questions you had, you had articles and 18 literature. 19 I mean, the articles and literature 20 that I've seen speak about the methodology of 21 reasonable royalty. Each case is different. 22 And so the methodology is the same. The 23 specific facts of what the infringement was or 24 what the benefits and the costs are are going to 25 be different, but -- but typically I haven't</p>

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